ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

V.

NORMAN STEELE

****

PROCEEDINGS AT TRIAL

****

BEFORE HIS WORSHIP JUSTICE OF THE PEACE B. HUNDAL

ON MONDAY, SEPTEMBER 10, 2001, AT TORONTO.

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CHARGES: FAIL TO WEAR COMPLETE SEATBELT ASSEMBLY

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APPEARANCES:

COUNSEL FOR THE CROWN — A. SUENG, ESQ./J. HOSEIN, MS.

AGENT FOR THE ACCUSED — R. STEINMILLER, ESQ.

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WITNESS	IN-CHIEF	CROSS-EX.
TIANTELLI, Tony	4	6

MR. SUENG: Thank you for the court's patience, Your Worship. I would like to start with item 29, Norman Steele. Agent for Norman Steele.

MR. STEINMILLER: Yes, good morning, Your Worship. I appear as agent on that matter. I am prepared to proceed. For the record, my name is Steinmiller, initial R.

MR. SUENG: Your Worship, the officer on this charge has mistakenly taken his 2001 notes as opposed to the year 2000 notes and we were wondering if it would be possible for the officer to read off the court's version of the documents. Or the information.

THE COURT: Is the officer requesting an adjournment?

MS. HOSEIN: If I can assist the court. What was your question, Your Worship?

THE COURT: If the officer is requesting an adjournment.

MS. HOSEIN: No, Your Worship, the prosecution is asking your permission to have the officer read -- use the information before the court to read his notes in evidence. That is the original to his notes.

THE COURT: (Inaudible)

MS. HOSEIN: Your Worship, in bringing his documents to court he picked up the wrong book and the year 2001 as opposed to the year 2000.

THE COURT: Do you have any objection to it?

MR. STEINMILLER: I have no objection, Your Worship. I believe the copy you have is an original made by the officer.

THE COURT: I'll allow the officer.

MS. HOSEIN: Thank you, if the matter can be arraigned.

CLERK OF THE COURT: On behalf of Norman Steele being charged on the 10th day of April, in the year 2000, at 12:50 a.m., eastbound Queen Street West at Niagara Street, Municipality of Toronto, did commit the offence, driver fail to wear complete seatbelt assembly, contrary to the Highway Traffic Act, s. 146(3).

On his behalf, how do you wish to plead to the charge, guilty or not guilty?

MR. STEINMILLER: Not guilty, Your Worship. I believe Your Worship -- is there an 11(b) Charter argument attached.

CLERK OF THE COURT: There is, Your Worship.

MR. STEINMILLER: Before we go any further, Your Worship, I'll ask that be marked as dismissed as abandoned. It is not my intention to argue unreasonable delay this morning.

CLERK OF THE COURT: This was up on June the 26th and there was a motion denied by Your Worship.

THE COURT: The motion was denied last

time.

MR. STEINMILLER: Then I guess it's a moot point. I'm prepared to proceed.

CLERK OF THE COURT: Guilty?

MR. STEINMILLER: Not guilty.

MR. SUENG: I'll call the officer.

TONY TIANTELLI (PH.): SWORN

EXAMINATION IN-CHIEF BY MR. STEINMILLER:

Q. On the 10th of April, the year 2000, were you employed by Toronto Police Services?

A. Yes, I was.

Q. Did you investigate the matter before the court?

A. I did.

Q. Did you make any notes regarding the matter before the court?

A. I did. I have the original copy before me. There have been no additions or deletions whatsoever and I would like to use them to refresh my memory.

Q. Do you have an independent recollection separate and apart from those notes?

A. Yes.

MR. SUENG: With the court's permission I would like to ask the officer to be able to use his notes.

MR. STEINMILLER: I have no objection, Your Worship.

THE COURT: Proceed, Officer.

THE WITNESS: Your Worship, on April the 10th, year 2000, at approximately 12:50

a.m. I was operating a marked police vehicle. At this time I was eastbound on Queen Street West and I observed a motor vehicle in front of me at Niagara Street. This was a taxicab and was for hire because I observed the light was on. There were no passengers inside the vehicle at the time other than the driver.

At this time I observed the driver's seatbelt straps were parallel and buckled by his left shoulders. I observed the vehicle a short distance away. The marker was 157TEW. I spoke with the driver who identified himself with a valid Ontario license and photo as Norman Eric Steele, date of birth of June 13, 1955 with an address in Toronto. I was satisfied with his identification.

At this time I asked the driver to put his seatbelt on. He did. It was functioning properly. He had no valid excuse as to why he was not wearing his seatbelt on this date and therefore I issued the offence notice before the court. This occurred in the City of Toronto.

MR. SUENG: Court's indulgence.

MR. STEINMILLER: Q. Officer, in the course of your investigation, did you ascertain if the defendant had any exemptions?

A. No, he had no excuse as to why he

shouldn't be wearing the seatbelt.

MR. SUENG: Court's indulgence.

MS. HOSEIN: Q. Did you ascertain that the defendant had a medical certificate?

A. No, he had no documentation, no doctor's note, no reason whatsoever as to why he wasn't wearing it.

Q. And you said that the defendant did not have a fare in the cab?

A. That's correct. He was the only occupant.

Q. Is there an exemption in this respect?

A. The only one that I know of is taxis for hire and doesn't have a fare he must wear his lap belt.

MS. HOSEIN: I have no further questions, Your Worship.

THE COURT: Any questions of the officer?

MR. STEINMILLER: Just one question, Your Worship.

CROSS-EXAMINATION BY MR. STEINMILLER:

Q. Officer, during the course of your investigation did you determine if the taxi driver was, in fact, on duty and available for hire?

A. Yes, he was.

MR. STEINMILLER: Thank you.

MS. HOSEIN: Case for the prosecution.

MR. STEINMILLER: I have no witnesses to call, Your Worship.

THE COURT: Any submissions?

MS. HOSEIN: Your Worship, I would like to

submit that the officer was there for the purpose of monitoring traffic problems which include the matter of a cab driver not wearing his seatbelt when there is no fare and that is subject to s. 7(3) of Ontario Regulations 613.

I would submit that a prima facie case has been made in this matter by prosecution and a conviction be registered.

MR. STEINMILLER: Yes, thank you, Your Worship. It would be my respectful submission, Your Worship, that there is an exemption under the Highway Traffic Act dealing with the issue of cab drivers who are on duty available for hire and whether or not they are required to wear their seatbelt. The exemption comes from Regulation 613(7)(2) which says --

MS. HOSEIN: P. 530, Your Worship.

THE COURT: Yes.

MR. STEINMILLER: The Regulation, specifically Part 2 says that,

> "Taxicabs are exempt from the requirement that upper torso restraints for driver seating positions and seatbelt assemblies in the center front seating positions not be removed, rendered partly or wholly inoperative, or modified so as to reduce their effectiveness."

What that means, Your Worship, is that they are allowed to remove the torso part of the seatbelt. They don't even have to wear the torso part. But the issue becomes, if the torso and the lap belt are all one, do they have to wear both or do they have to wear neither one? My respectful submission, Your Worship, and I do have some cases this morning that I am going to refer to is that they don't have to wear either part.

This is separate and apart from the issue as to whether or not there is a passenger in the cab. The following section, which is subsection 3, deals with the issue as to whether or not they have to wear it when there is a passenger. And everybody agrees if there is a passenger in the cab they do not have to wear their seatbelt. The issue as to whether or not they have to wear a seatbelt when they are alone in a taxicab it goes back.

The first case I'm referring to Your Worship - and I'll pass these forward. I've given them to my friend earlier. The first case goes back to 1984 and it deals with exactly this particular issue. It was an appeal in this building in front of Judge Climans and the issue was whether or not a cab driver is exempt. I'm not going to read the entire case, Your Worship,

because I don't think it's necessary.

If we can just look on p. 3 of this decision because I think this is a very important point. Two-thirds of the way down the court says,

> "I don't understand regulation section 2,"

and then reads verbatim starting at line 19,

> "Taxicabs are exempt from the requirement that upper torso restraints,"

and it goes on. That's on p. 3 of the decision, Your Worship. I don't think the pages are number anymore. It's on line 19 where it starts with the number two and says that taxicabs are exempt.

The point being, Your Worship, in 1984 the wording that the court read into that decision is the same wording that exists in the 2000 copy of the Highway Traffic Act. So the wording back then and the wording now are identical. For 17 years they've been arguing this issue, but nobody has changed the Highway Traffic Act. And in that decision at the top of the final page the crown prosecutor, Mr. Manraj, he referred to this as double Dutch. He's referring to the wording of the regulation. On the final page of the decision Mr.

Manraj says,

> "Your Honour, that is double Dutch."

And the court says,

> "It sure is. In any event, the charge is on a taxi driver and in any event, failing to wear a complete seatbelt assembly doesn't apply. I'm going to allow the appeal and dismiss the charge."

It was his position back then and this is from the Court of Appeal, Your Worship, that taxicab drivers were exempt by virtue of the wording of the Regulation. That Regulation still reads the same.

In 1994, the next case I believe Your Worship has is the one that says Her Majesty the Queen versus Hardeep Hundal. This is the next decision I'm referring to. That was a decision by your brother Justice of the Peace Mr. Kent in this particular court. Mr. Kent in dealing with the same issue came to the same decision and I think the most appropriate wording, if I could refer to it briefly, is on p. 5 of Mr. Kent's decision.

In his reasons for his decision he says,

> "What directions are there for

him,"

and then he said,

"If the law charges a man with not wearing a complete seatbelt assembly, complete seatbelt assembly is the torso and the lap portion, if he is allowed not to wear the top one and he's supposed to wear the lower one but he can't change the seatbelt assembly, how in heaven's name can you charge him with not wearing the complete seatbelt assembly."

And he goes on to dismiss the charge.

That particular decision, Your Worship, was appealed by the crown. And the next case that you have before you is the results of the crown's appeal. It was heard in 1995 in this building in the Court of Appeal in front of His Honour Judge Graham. Judge Graham in his decision indicates that he is very familiar with the regulation. On p. 3 Judge Graham indicates that he sat on the committee that passed the legislation. And he goes on to say, again on p. 6, he reads at the bottom of the page the actual wording,

"Taxicabs are exempt from the requirement."

The only point being that this is still the same wording that we were dealing with in 1984 and we are still dealing with it today. On p. 7 of his decision, Judge Graham says, and this is on line 22,

> "If the driver of a taxicab while driving fore hire and the other thing is that s. 613.7.2 has a complete exemption, so I don't know. I think there's confusion here. I think the justice of the peace was right and they can amend the Act."

So he upheld Justice of the Peace Kent's decision and ruled the cab driver was exempt.

Again, Your Worship, in 1998, and this is something that just keeps coming back and back before these courts, the next decision is the MacIntyre decision. I believe you have a copy of that one as well. The Court of Appeal. Judge Salem. A little more lengthy decision and one that was argued by two prosecutors. The bottom line is -- I'll just refer to his decision on p. 12. The argument is all basically what we've heard before.

This was in front of Judge Salem. He says,

> "I follow your logic, but it just

doesn't make sense to me. It seems to me that what we're up against is that the cabbie that walks to his vehicle and cuts the shoulder strap is fine. The person that doesn't cut the shoulder strap for whatever reason, whether he's going to use that cab for personal reasons or whether it isn't his cab is the one that is going to be convicted under the section. That just doesn't ring true to me. This is an appeal here. I'm going to allow the appeal. I'm not going to grant a new trial. I'm going to enter an acquittal."

So we have three case from the Court of Appeal, Your Worship, which I submit are binding on this lower court. And we have one decision from Justice of the Peace Kent indicating that he followed those decisions. And I have here two more which are recent ones. The first one is -- and I don't know if Your Worship has a copy of this. I did give a copy to my friend. This is the one of Redwan Mohamed (ph.). Does my friend have a copy of that one?

MS. HOSEIN: I do.

MR. STEINMILLER: This is one that came down in this building, Your Worship, from

Justice of the Peace Andrew Clarke and it was in August of last year. Do you have a copy of that one, sir?

THE COURT: No, I don't. I have a copy from Justice Keilty.

MR. STEINMILLER: I was about to refer to that one. I apologize, Your Worship. If I could just refer to one page of Mr. Clarke's decision and then I'll hand this one to the court and you can keep that one if you like. He, once again, reviewed the entire argument and came to the conclusion on p. 6 of his decision,

> "I find myself bound by the cases cited by Mr. Steinmiller. While I appreciate the logic of the prosecution's position, I find that logic strained and a bit artificial. There are no answers to certain basic questions, such as with today's combined assemblies would disabling the torso portion also necessarily disable the lap portion. If that is the case then that is something that the Regulation condones. I find that Regulation 7, 2, and 3, creates confusion. Consequently, I find that the charge of failing to wear a seatbelt assembly in context with this case is improper and the

charge is dismissed."

I apologize, Your Worship, that was my only copy. Again, that was from last year. And in March of 2001 again in this court Justice of the Peace Keilty reviewed the issue and I can tell you that he reviewed it carefully because he took probably a few weeks to make his decision after I provided him with all the case law. And in the issue of Zaidi he referred on p. 16 he referred to Mr. Clarke's decision and says,

> "There is a time-honoured rule of statutory interpretation which demands that taxing or penal Statute given the strictest of interpretation so a citizen is not taxed or penalized unless his activity falls foursquare within the ambit of the Statute."

Which means he agreed with Mr. Clarke and three appeal court judges and dismissed the charge. So I think, Your Worship, there is ample case law before you this morning that deals with the issue. The problem is simply the legislation has never been changed and the legislation was put in when it was possible to have, or at least most vehicles were equipped with two-piece seatbelt assemblies so you could wear the lap portion without wearing the shoulder

portion.

Modern vehicles don't have that anymore. The seatbelt is all one and if you cut the top part off then you render the seatbelt inoperative. So it would be my respectful submission, Your Worship, that cap drivers based on the legislation as it sits now and three judges have already said if it's ambiguous they can change it, but based on what we have and what we're dealing with it ought to be interpreted the way these other cases have and that is cab drivers are exempt and they don't have to wear it with or without a passenger. And I ask Your Worship to follow that same decision. Thank you.

THE COURT: Do you want to respond to his submissions?

MS. HOSEIN: Yes, Your Worship, I do have the case law that Mr. Steinmiller has referred to. Unfortunately just having received them I haven't had an opportunity to provide case law opposing what he has suggested with his case law here. The section that he talks about and rightly so that the upper torso of the driver's seatbelt being exempt has given the situation that the seatbelt now has that full assembly I would submit the law before the court would really be section 3, subsection 3 of s. 7 of this Ontario Reg

613.

I would have liked the opportunity to provide case law that this is the applicable law given that the manufacturing now of seatbelts does not contain the two portions separately, but one portion and cab drivers should be wearing the complete seatbelt when there are no fare in the cabs. Having said that, I didn't have an opportunity to provide case law showing this part of the law. I would submit you do either grant an adjournment for me to do so, or decide as other justices in this court have decided that the correct law at this time is s. 7(3).

MR. STEINMILLER: Your Worship, in fairness to my friend I did give her these six cases only before the beginning of court. I have no objection if Your Worship wants to put it over for a few weeks, not only to read the cases a little more carefully, but to provide my friend with the opportunity to submit any --

THE COURT: This court is ready to adjourn this matter to future dates so the prosecution can provide submissions.

MR. STEINMILLER: Certainly.

MS. HOSEIN: October 31st.

MR. STEINMILLER: That's an agreeable date, Your Worship.

THE COURT: The 31st.

ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

V.

NORMAN STEELE

****

PROCEEDINGS AT TRIAL

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BEFORE HIS WORSHIP JUSTICE OF THE PEACE B. HUNDAL

ON WEDNESDAY, OCTOBER 31ST, 2001, AT TORONTO.

****

CHARGES: SEATBELT

****

APPEARANCES:

AGENT FOR THE CROWN — J. HOSEIN, MS.

AGENT FOR THE ACCUSED — R. STEINMILLER, ESQ.

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MS. HOSEIN: The next matter number 26 on the docket, Norman Steele.

MR. STEINMILLER: Good morning, Your Worship, for the record it's Steinmiller, initial R.

THE COURT: Good morning.

MR. STEINMILLER: I appear as agent on this matter. I believe this matter is for judgment this morning, Your Worship.

THE COURT: I think we left off with submissions.

MS. HOSEIN: That is correct, Your Worship.

MR. STEINMILLER: I believe I made my submissions and Your Worship has the case I was relying on. So it is for the crown to provide --

THE COURT: I believe you asked for adjournment --

MS. HOSEIN: Yes.

THE COURT: Any submissions?

MS. HOSEIN: Yes, Your Worship, I'm relying on the case of Glen Johnstone. I believe you have a copy of it. This is a matter that was before Judge Reinhardt on June 29th, 1995.

THE COURT: What's the case law, did you say?

MS. HOSEIN: Glen Johnstone. You don't --

THE COURT: Did you give a copy to ...

MS. HOSEIN: Do you have a copy of that?

MR. STEINMILLER: I don't, Your Worship. No, I don't.

MS. HOSEIN: If I can then hold this matter to get a copy made. I was under the impression that copies already had -- if that's okay with Mr. Steinmiller. Okay.

... The matter was held down briefly.

MS. HOSEIN: Your Worship, if we can deal with the Steele matter, number 26, which we held down. I made a photocopy of this particular case, Glen Johnstone. I passed them on to Mr. Steinmiller. Your Worship, this particular case by Judge Reinhardt clearly articulates that the crown's position in that the regulation in question which the defendant is relying upon deals with the actual vehicle and the fact that if the cab -- if the vehicle has a -- is being used as a cab, a taxi, then the upper torso can be removed.

And the fact of the matter is as he clearly outlines that in a page -- on p. 5 there is a section here line 10 or it starts just above line 10 the court is saying that the section means a taxicab is not required to have an upper torso restraint, but the taxicab driver is

required to wear the restraint in the particular section.

What I'm submitting, Your Worship, is the taxicab driver was correctly charged in this matter before the court in that he was working as a cab driver. He did not have a fare in his vehicle which is the exemption provided under s. 106(3) and this is the reason why the offence notice was issued.

The case law provided by Mr. Steinmiller they all indicate that the case -- the law regarding seatbelts is in a state of confusion. I would submit to you, Your Worship, that it is not in confusion. At the time that regulation was written it talks about the seatbelt being in two parts. I'm asking this court to apply your common sense to the facts here.

The seatbelts in all vehicles right now is a one piece seatbelt and the only exemption provided to taxicabs is when they have a fare they're not required to wear the seatbelt. But when they do not have a fare they are required to wear this one piece seatbelt, the complete seatbelt.

The court clearly states that -- on the

plain reading in p. 13, line 15, the section -- the plain -- in his view the plain wording of s. 7(3) is the exemption --

THE COURT: What page?

MS. HOSEIN: This is p. 13.

THE COURT: This is p. 13?

MS. HOSEIN: Yes.

THE COURT: Which line?

MS. HOSEIN: Fifteen.

THE COURT: Okay.

MS. HOSEIN: He says, "In my view" the plain wording of subsection (7) -- subsection (3) is that the exemption is while the driver of the cab -- taxicab is transporting for hire a passenger and that is the exemption pertaining to the driver and he dismisses the appeal by the defendant.

So I would submit, Your Worship, that based on the decision of Judge Reinhardt that a prima facie case has been made. The cab driver did not have a fare in the facts in this case which is the facts in the Reinhardt decision and he was required by law to wear this completed seatbelt assembly and those are my submissions.

THE COURT: Mr. Steinmiller, did you want to respond?

MR. STEINMILLER: Yes, briefly if I may,

Your Worship. Based on this case that I've read this morning I've had a chance to read it over a couple of times and I think what becomes apparent with the greatest of respect to Judge Reinhardt is that he doesn't understand the legislation, because in his reasons for judgment he talks about s. 7(3). Is that the exemption is while the driver of the taxicab is transporting for hire a passenger and that's an exemption to 106(3).

That's not the issue at all because we know under s. 7(3) of the regulation the driver of a taxi with a fare is exempt. It's very clear. It's written there. It couldn't be any more clear and that's the reason he bases his judgment that he feels from reading this that that is the only exemption. But the other three cases go into a little more depth and they realized that the exemption comes from 7(2) which allows the taxicab or the taxi driver, if you will, to remove the upper torso restraint.

He doesn't even have to have it. He can cut it out. He can remove it. He can choose not to wear it. However, the problem of course is in this day and age, Your Worship, motor vehicles have one

piece seatbelts. So the issue becomes if it's one piece, does he have to wear the whole thing or does he have to wear neither nor. And it's clear from the regulations that if he has a fare he doesn't have to wear either. But the issue is, does he have to wear the seatbelt while he doesn't have a fare given the legislation that it is today.

And in this case I think it's quite clear - again with the greatest of respect to Judge Reinhardt - that he keeps repeating -- and I'm just looking through this. On p. 7, line 23,

> "What I am not understanding though you are asking me to look at Judge Graham's decision,"

and he goes on. They try to explain it.

THE COURT: You have the page number?

MR. STEINMILLER: This is on p. 7. The learned judge says,

> "What I am not understanding.."

So at that point he's still not grasping the argument. And then it goes on. On p. 11, the top of the page. Again we have His Honour saying,

> "Well, I'm just trying to understand though because the reference in the regulation,"

and he goes on.

So at that point he still isn't aware of what the actual argument is. If you read the remaining amount of the transcript, even on the top of p. 12, the judge is still asking,

> "Why do you say that because it doesn't appear to be,"

and then he's interrupted by the agent and he never does seem to get a grasp of the argument. So he just goes on to say well the only exemption I see is under subsection (3) and this is not clearly the case because there was no fare so I'm going to allow the appeal.

I think if Your Worship would, the decision -- the one regarding Renwan Mohammad, which is a decision this year by your brother Justice of the Peace Andrew Clark. Now I realize, Your Worship, that this decision is not binding on Your Worship, but I think if you look at his decision, he actually refers to this case, Glen Johnstone. He refers to it and he looks at it and he makes a ruling based on not only the three cases that support the position that I've asked Your Worship to find, but he also makes his ruling based on what the learned judge said in the Johnstone decision.

Now, I apologize I don't have that case with me so I can't point it out to you specifically, but I believe it's in his reasons for judgment and it's about the second page from the end. He actually refers specifically to this Johnstone case. He states, "I don't think in my opinion --

MS. HOSEIN: I have a copy if you would like to look at it.

MR. STEINMILLER: Thank you very much. Let's see what page number we have here. It's on p. 4, Your Worship, near the bottom. And at that point His Worship Mr. Clark indicates on line 25,

> "I've been referred to four Ontario Court Provincial Division cases all out of Toronto in which Provincial Court Judges considered the issue upon appeal from decisions of Justices of the Peace. Of these, only *R.v. Johnstone* supports the prosecution's position. In that case the learned judge found 7(3) was clear. However, it appears to me he doesn't consider the interaction of 7(2)."

And that's what I'm saying having read

the decision this morning, Your Worship, that it doesn't appear to be. And based on His Worship's -- if we go all the way to p. 6 of this decision, once again His Worship, Mr. Clark, refers to on line 16,

> "Since there were no reasons given in this Johnstone case,"

and that's very clear at the end of it. His Honour doesn't give reasons for making his judgment. The only reason he gives is that 7(3) allows an exemption if there is a fare in the cab, but in this case there was no fare so I have to find you guilty.

The other three decisions all go into fairly lengthy reasons for making their decisions, as did Justice of the Peace Clark in a very well thought out decision, and he himself says there were no reasons given by Judge Reinhardt for coming to that conclusion. In fact, the other three judges all considered the issue a little more carefully and came to the opposite conclusion.

So I'm going to invite Your Worship to find as did His Worship Mr. Clark, as did three provincial court judges, and as did other Justices of the Peace which you have the case, that there is an exemption and the exemption is created by the

wording of the section. And until the section is either changed or clarified or removed then the driver of a taxicab is entitled to that exemption and should not have to wear a seatbelt. Those would be my arguments, Your Worship.

MS. HOSEIN: Your Worship, if I can draw your attention to p. 12 of the Johnstone decision. I would submit that Judge Reinhardt was not confused by the time he made his decision at all, because the crown in that case at line 15 clearly articulates the differences between the sections and indicates here on line 15 on p. 12 that he talks of saying that s. 7(2) speaks of taxicabs, not of taxi drivers. The taxi driver was the one charged. This whole regulation where it begins it's at seatbelt assemblies is speaking about seatbelt assembly itself, not about the driver's of the cabs.

Now, s. 7(2) says very specifically taxicabs are exempt from the requirement. Then why are taxicabs not having that upper portion removed if that's the case. Now, to continue -- so it is speaking about the regu -- the spirit of it is about the equipment in the taxicab, not about the driver. Any exemption I would agree with Your Honour's in s. 3 the driver of the taxicab while transporting

for hire a passenger is exempted from subsection 106(3) of the Act and that is the only exemption that I see and the only evidence we have in transcript which again identical facts in this case.

I would submit that His Worship Clark decision again is saying that Judge Reinhardt was -- didn't consider the interaction. I would submit that is inaccurate. He did consider the interaction between these two sections because it's -- Mr. Powell the crown clearly articulates the differences between these two sections and that -- and then the court made his decision based on those arguments.

I would like to again confirm that Your Worship is not bound by Justice Clark's decision and that there is no confusion in the law at all. I am asking you to apply your common sense, again, because when the taxi driver is not wearing -- is not -- does not have a fare in his cab he is required to wear his seatbelt. And that's clear in the Act. And those are my submissions.

MR. STEINMILLER: Well, Your Worship, with the greatest of respect, I think one of the advantages of not calling a defense is that the crown has to make

their submissions first and I get the opportunity to respond. So without belabouring this, the only thing I would like to point out is the comments that my friend has read regarding p. 12 came from the prosecutor. It didn't come from the judge.

Those thoughts where it speaks about seatbelts assemblies and speak of taxicabs not of taxi drivers, that came from the prosecutor and not from His Honour. His Honour didn't give any reasons for his decision other than the fact that 7(3) is the only exemption that he's aware of. Those would be my submissions.

THE COURT: The time is twenty after ten. Do we have many matters?

MS. HOSEIN: Yes, we do. Those will be marked Deemed, Your Worship. There are three or four.

THE COURT: Mr. Steinmiller, is it okay that I hand down my decision (inaudible).

MR. STEINMILLER: I'm here all day if you would like to take until 1:30 to perhaps consider it over lunch. I have no problem with that because I'm back in this court at 1:30 today.

THE COURT: All right. (Inaudible) given the case law and your argument.

MR. STEINMILLER: Certainly, Your

Worship.

THE COURT: So I will give a decision in this matter at 1:30.

MS. HOSEIN: Okay.

... The matter was held down briefly.

MS. HOSEIN: If we can proceed then with the matter of Mr. Steinmiller.

THE COURT: In the matter regarding defendant Norman Steele who was charged under s. 106(3) of the Highway Traffic Act, fail to wear complete seatbelt assembly on April the 10th, year 2000. The defendant has appeared before the court with this agent Mr. Steinmiller where such motion was brought and the motion was denied and the matter was adjourned on consent to September the 10th.

On September 10th Mr. Hosein and Mr. Sueng for the prosecution and Mr. Steinmiller again. The court heard evidence of Police Officer Tony Tiantelli and defense did not call any witness. Subsequently submissions were made by both sides and the matter was again adjourned to today's date on consent in order to accommodate the prosecution to make more submissions in relation to case law cited by Mr. Steinmiller.

And more submissions were made before this court by both sides this morning and the matter was again adjourned to 1:30 p.m. in order to make judgment on this matter. The court is thankful to Ms. Hosein and Mr. Steinmiller for providing this court with case law which will assist this court in making a very informed decision.

The court is ready to render its decision. In this case the facts are not in dispute. At issue is whether the taxi driver can properly be charged under s. 106(3) of the Highway Traffic Act for failing to wear a complete seatbelt assembly in a properly adjusted and securely fastened manner.

Starting with s. 106(3) subject to subsection (5) every person who drives on a highway in a motor vehicle in which a seatbelt assembly is provided for the driver shall wear the complete seatbelt assembly in a properly adjusted and securely fastened manner. And then, subsection (5) is regarding the exemption. It says subsections (3) and (4) of s. 106 do not apply to persons (a) driving a motor vehicle in reverse; (b) who hold a certificate signed by a legally qualified medical practitioner

certifying that the person is (1) (inaudible) stated in the certificate unable for medical reasons to wear a seatbelt assembly; or because of the person's size, weight or other physical characteristics unable to wear a seatbelt assembly; (c) who is actually engaged in what (inaudible) alight from and reenter a motor vehicle at frequent intervals and who while engaged in work does not drive that vehicle at a speed over 40 kilometres per hour; or (d) under the age of 16 years.

Mr. Steinmiller during his submissions turned the court's attention to Regulation 613 which was passed pursuant to the Highway Traffic Act of Ontario and the (inaudible). Mr. Steinmiller made argument that there is an exemption under Highway Traffic Act dealing with the issue of cab drivers who are not on duty available for hire and whether or not they are required to wear a seatbelt.

The exemption is sought from Regulation 613(7)(2). This Regulation -- the court is reading Regulation 613(7) Part 1 -- Part 2. Taxicabs are exempt from the requirement as upper torso restraints for drivers sitting position and seatbelt assembly front seat sitting position not

to be removed rendered partially or wholly inoperative or modified so as to reduce the effectiveness.

Subsection (3) of Regulation 613 (7)(3) driver of a taxicab while transporting for hire the passenger is exempt from subsection 106(3) of the Act. The court heard from the evidence of the police officer that the cab was equipped with a complete seatbelt assembly and it was functioning properly and also that the defendant had no excuse as to why he should not be wearing the seatbelt.

In other words, the defendant did not seek any exemption under section 106(5). Also court heard there was no passenger sitting in the cab at that time and therefore Regulation 613(7)(3) did not apply. This court has been referred to a number of cases dealing with the issues surrounding the seatbelts by taxicab drivers.

The court has been referred to (inaudible) in which provincial court has considered the issue upon appeal from decisions of the justice of the peace. The court has considered these case law. There have been opposing decisions on these matters by the provincial court

judges. This court is more persuaded by the decision of Honourable Justice Reinhardt which was entered on October 29th, 1995 in the matter of *R. V. Glen Johnstone*.

The court is of the opinion that this is the most applicable decision to this matter before the court. The matter before this court is cab driver charged for not wearing complete seatbelt assembly under section 106(3) of Highway Traffic Act. And therefore at issue is s. 103(3) and s. 106(5) not Regulation 613(7)(2).

The court would have considered Regulation 613(7)(2) if the cab was not equipped with a seatbelt assembly. Since the cab was equipped with complete seatbelt assembly therefore court finds no reason for the defendant not to wear it. Especially in the absence of any passenger sitting in the cab at that time. The court is satisfied that the prosecution has proved its case without a reasonable doubt and therefore finds the defendant guilty.

Mr. Steinmiller, any submissions on fine?

MR. STEINMILLER: No, thank you, Your Worship.

THE COURT: There will be a set find of $90. Thirty days to pay?

MR. STEINMILLER: That would be fine, sir. Thank you.

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This is to certify that
the foregoing is a true
and accurate transcript
of the audio recordings
of Clerk V. Pugh transcribed
to the best of my skill and
ability.

Beverly M. Moss
Official Court Reporter